

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

NORTH COUNTY COMMUNICATIONS CORPORATION )  
 )  
 Vs. )  
 )  
 VERIZON NORTH, INC., and VERIZON SOUTH, ) Docket No.  
 INC. ) 02-0147  
 )  
 Complaint pursuant to Sections 13-514, )  
 13-515, and 13-516 of the Public )  
 Utilities Act and 83 Illinois )  
 Administrative Code Part 766 )

Springfield, Illinois  
February 21, 2003

Met, pursuant to notice, at 1:30 p.m.

BEFORE:

MR. WILLIAM SHOWTIS, Administrative Law Judge  
MR. JOHN ALBERS, Administrative Law Judge

APPEARANCES:

MR. JOSEPH G. DICKS  
Law Office of Joseph G. Dicks  
750 B Street, Suite 2720  
San Diego, California 92101

(Appearing on behalf of North County  
Communications Corporation via  
teleconference)

SULLIVAN REPORTING COMPANY  
By Jami Tepker, Reporter  
CSR# 084-003591

1 APPEARANCES: (CONT'D)

2 MS. SARAH NAUMER  
3 Sonnenschein, Nath & Rosenthal  
4 8000 Sears Tower  
5 Chicago, Illinois 60606

6 (Appearing on behalf of Verizon North,  
7 Inc., and Verizon South, Inc., via  
8 teleconference)

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## I N D E X

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WITNESSES

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None.

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## E X H I B I T S

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None.

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## PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Number 02-0147. This docket is a complaint initiated by North County Communications Corporation versus Verizon North, Inc., and Verizon South, Inc. North County's complaint is submitted pursuant to Sections 13-514, 13-515, and 13-516 of the Public Utilities Act and Code Part 766 of the Illinois Administrative Code.

May I have the appearances for the record, please.

MR. DICKS: Joe Dicks for North County Communications from the Law Office of Joseph G. Dicks, 750 B Street, Suite 2720, San Diego, California, appearing by permission of the Court under your local rules.

MS. NAUMER: On behalf of Verizon North, Inc., and Verizon South, Inc., Sarah Naumer of the law firm Sonnenschein, Nath & Rosenthal, 8000 Sears Tower, Chicago, Illinois 60606.

JUDGE ALBERS: Thank you. Let the record

1 reflect that there are no others wishing to enter an  
2 appearance.

3 The purpose of this hearing is to address  
4 some discovery disputes that were brought to our  
5 attention through a letter dated February 14, 2003,  
6 from Sarah Naumer. Judge Showtis and I have  
7 reviewed what Miss Naumer has sent us and are  
8 prepared to discuss the various data requests that  
9 Verizon has sought responses on.

10 Before doing that, though, is there  
11 anything the parties would like to say?

12 MR. DICKS: From North County's position, Your  
13 Honor, unless you have questions for us, unless it  
14 hasn't been made clear what our position is, we  
15 just would like to hear what the recommendation is  
16 so that we would have the opportunity to avoid the  
17 expense and time of a formal --

18 JUDGE SHOWTIS: Okay. That's fine. What we  
19 would intend to do is to take up each particular  
20 discovery request in order -- in the order in which  
21 they were addressed in Sarah Naumer's letter.

22 MR. DICKS: Okay.

1 JUDGE ALBERS: The first one concerns DR 3.04.  
2 And in particular -- let me just turn to that --  
3 3.04 asks, "When did NCC place an order for any  
4 switch for use in Illinois? Please provide copies  
5 of all documents evidencing NCC's answer including  
6 but not limited to order forms and invoices."

7 It seems to us that the operative word  
8 here is when. And although in the previous answer  
9 it seems that North County indicates that it  
10 obtained its switches in April of 2001, we read the  
11 Verizon DR as asking when did North County place  
12 the order.

13 And we don't see any reason why North  
14 County can't provide the date as to when it placed  
15 the order. And to the extent that that date is  
16 reflected on any type of order form or invoice, we  
17 don't see any reason why that, why a copy of those  
18 documents can't be provided.

19 However, given the concerns raised about  
20 sensitive pricing information, we don't see any  
21 reason why any pricing information on order forms  
22 or invoices or other documents couldn't be redacted

1 before those documents are provided to Verizon.

2 MR. DICKS: Okay.

3 JUDGE SHOWTIS: So just -- Mr. Dicks, just to  
4 make it clear, what we're asking you to turn over,  
5 we don't believe any of that would be proprietary  
6 'cause we're taking out -- if there are invoices or  
7 order forms, you should redact or black out any  
8 references to prices. So that's what our ruling is  
9 with regard to VZ-NCC 3.04.

10 MR. DICKS: Okay.

11 JUDGE ALBERS: The next two DRs, 3.05 and 3.07,  
12 concern North County's business plan for Illinois.  
13 We understand North County's objections are on the  
14 basis of or are based on concerns that Verizon  
15 should not see the business plan because it would  
16 be competitively detrimental to North County.

17 Given that we're not sure ourselves what  
18 the business plan entails, we would ask that North  
19 County provide us with a copy of that business plan  
20 before determining whether or not that's something  
21 Verizon should see.

22 MR. DICKS: Okay.

1 JUDGE SHOWTIS: Or see what certain portion's  
2 redacted, for example.

3 Let's just go off the record for a second.

4 (Whereupon there was  
5 then had  
6 an off-the-record  
7 discussion.)

8 JUDGE SHOWTIS: First of all, we've requested  
9 that Mr. Dicks fax to us North County's business  
10 plan for our review on Tuesday, with a status  
11 hearing at three o'clock our time that day to  
12 address what portions, if any, of the business plan  
13 should be turned over to Verizon.

14 Miss Naumer, I believe you indicated off  
15 the record a desire to see what is faxed to us on  
16 Tuesday before we ruled. Would you repeat your  
17 argument on the record?

18 MS. NAUMER: Yes, I would, Your Honor.

19 We are -- I'm sorry, Your Honor. Did you  
20 want me to state my objection to the first issue  
21 that we discussed previously or to the second issue  
22 that we just discussed?



JUDGE SHOWTIS: The first issue, which I guess is an objection that -- objecting to the distribution of the business plan to us and not to you also before we rule.

MS. NAUMER: Thank you, Your Honor.

I would state an objection for the record that myself, as outside counsel to Verizon North, Inc., and Verizon South, Inc., in this matter, not be provided with a copy of North County's business plans that are produced to the judges in camera for review in this proceeding at that time so that I would have an opportunity to review those business plans and engage in meaningful discussion at the subsequent status hearing as to the appropriateness of those business plans being provided under the appropriate confidentiality provisions to certain employees of my client, Verizon, that would, pursuant to the protective order entered by the judges in this proceeding, be required to keep that information confidential and not subject to disclosure.

So my objection would be to my inability

1 to review the material at issue prior to any  
2 decision being made.

3 MR. DICKS: Of course we object to anybody  
4 seeing it until the judges have an opportunity --

5 MS. NAUMER: You know, as a clarification of my  
6 objection, Your Honor, I clearly would not be  
7 seeking that information under anything other than  
8 confidential protections of the type that the ALJs  
9 provided in their protective order.

10 MR. DICKS: Same objections, Your Honor.

11 JUDGE ALBERS: Well, hearing those arguments,  
12 Judge Showtis and I believe that at this time he and  
13 I should be the only ones to review the business  
14 plans. And as indicated before, we may or may not  
15 decide that all or some of it should be available  
16 to Verizon at some point.

17 The second part of this business-plan  
18 question, though, is how far back or what time  
19 period should the business plan or should the  
20 information that is provided to us cover? And given  
21 that North County's response to another data  
22 request, VZ-NCC 3.06, indicates that its planning

1 process began in June 2000, we believe it would be  
2 appropriate for North County to provide to us its  
3 business plan covering the period of June 2000  
4 through the present.

5 JUDGE SHOWTIS: In other words, if there was an  
6 original proposed business plan that's been  
7 modified, we'd like to see the original and then  
8 any modifications.

9 MR. DICKS: Like I said, the documents are very  
10 informal and there's not a lot of them. So it may  
11 not even be an issue. But understanding the order,  
12 we will provide what the judges have requested.

13 JUDGE SHOWTIS: Okay.

14 JUDGE ALBERS: Okay.

15 JUDGE SHOWTIS: And as we stated previously, we  
16 will rule on what portions, if any, of the business  
17 plan should be turned over to Verizon at the next  
18 hearing in this matter on Tuesday, February 25th,  
19 starting at three p.m.

20 JUDGE ALBERS: The next one was VZ-NCC 3.08(B).  
21 And that one concerns the location of any end users  
22 that North County has committed to provide service

1 to.

2 Judge Showtis and I have reviewed North  
3 County's response to that data request and are of  
4 the opinion that North County can and should  
5 provide to Verizon at least the name of the town or  
6 city in which those customers are located.  
7 However, the particular customer need not be  
8 identified.

9 MS. NAUMER: Your Honor, thank you. And as I  
10 looked back at our discovery requests, I noticed  
11 that that was somewhat ambiguous. We were never  
12 seeking the exact identity of the customer. We  
13 were looking for what you are requiring be provided,  
14 which is the location, i.e., the township.

15 JUDGE SHOWTIS: It appears that in the response  
16 that one of North County's objections, among other  
17 things, concerned the possible loss of customers.  
18 So we're clearly indicating that we're not asking  
19 that the identity of any customers be turned over,  
20 just the location, which would be the city or town.

21 MR. DICKS: Okay.

22 JUDGE ALBERS: Okay.

1 JUDGE SHOWTIS: And also, by the way, we don't  
2 consider that information to be proprietary.

3 MR. DICKS: I understand.

4 JUDGE SHOWTIS: Okay.

5 MR. DICKS: Well, I mean, it looks like they  
6 were asking for the identity of competitors. And  
7 we never received any confirmation from, when we  
8 made our objection, from Verizon that they weren't  
9 asking for that.

10 JUDGE SHOWTIS: I can see where you may have  
11 had some confusion, 'cause it does refer to the end  
12 users and maybe you thought that was requiring  
13 turning the names of potential customers over.

14 Okay. Let's go to the next one.

15 JUDGE ALBERS: The next one is 3.08(C), and the  
16 issue with that one is similar to that of 3.09.  
17 And I think our main question here stems from other  
18 responses made by North County indicating -- or  
19 rather -- I'm sorry -- other statements made by  
20 Verizon in the cover letter indicating that  
21 interconnection did not actually occur with North  
22 County until late August 2002 and early September of

1           2002.

2                       And Verizon also notes that North County  
3           did not file tariffs with the Commission until  
4           November 11th of 2002. Our concern rises from the  
5           fact that the responses to DR 3.08(C) and 3.09  
6           indicate that the start date or the service began  
7           in August of 2002. And given what we -- given what  
8           Verizon alleges about the time of interconnection  
9           and the time of tariff filings, we're not sure that  
10          those responses that North County provided are  
11          accurate.

12               MR. DICKS: Well, here's I guess what I'm  
13          looking at. If you look at 3.08, it talks about the  
14          date that NCC committed to provide service. And  
15          NCC may have committed to individuals to provide  
16          service and then couldn't do it because of the  
17          stall tactics it ran into when it tried to get  
18          interconnected with Verizon.

19               So we realize when that interconnection  
20          took, and we realize when the agreement was filed  
21          but after the date that we committed to provide  
22          service, not when we were authorized.

1 JUDGE SHOWTIS: Okay. I understand your  
2 response, Mr. Dicks. I have a follow-up question.

3 If there were further commitments to  
4 provide service to any end users after August 2002,  
5 I think you should provide that also.

6 MR. DICKS: Okay. Let me get this down here.

7 JUDGE SHOWTIS: 'Cause if I understand your  
8 answer, North County made a commitment to provide  
9 service to certain end users in Illinois and  
10 indicated I guess to those end users that it would  
11 provide service in August of 2002.

12 And what I'm asking for is if there's  
13 further, if there were further commitments to  
14 provide service after that day.

15 JUDGE ALBERS: Or changes of those commitments.

16 JUDGE SHOWTIS: Or any changes in commitments.

17 MR. DICKS: Okay.

18 MS. NAUMER: Your Honors, I still don't  
19 understand how a stated response would resolve their  
20 answer to VZ-NCC 3.09.

21 MR. DICKS: Well, I don't think we've gotten  
22 there yet.

1 JUDGE ALBERS: Well --

2 MR. DICKS: I mean --

3 JUDGE SHOWTIS: Well --

4 MR. DICKS: We have no implementation schedule.

5 JUDGE SHOWTIS: Okay. Could you explain,  
6 turning to 3.09, what you mean by service beginning  
7 in August 2002?

8 MR. DICKS: I guess I'm going to have to talk  
9 to the client about it because, you know, these are  
10 his responses. I mean, if the judge is ordering a  
11 clarification of 3.09, then we'd be happy to  
12 clarify it.

13 JUDGE SHOWTIS: Yeah. I think that needs to be  
14 clarified. If the second sentence still remains  
15 true, you can so indicate, but we do need an  
16 explanation of the statement that service began in  
17 August 2002 or what that's supposed to mean by  
18 service beginning then.

19 MR. DICKS: Okay.

20 MS. NAUMER: Your Honor, I'm not sure -- one  
21 final thing before we move off of these two  
22 discovery requests.



1                   I'm not sure if we had specifically  
2           requested documentation of these commitments of  
3           start dates as part of the requests. If we had not,  
4           I would like to issue a follow-up data request at  
5           this time. And I just think it's easier to state  
6           it, you know, on the record now versus sending out a  
7           follow-up piece of paper.

8                   MR. DICKS: Well, I don't think that's fair.  
9           If she wants to issue a data request, have her  
10          issue it and we'll respond to it. I think that's  
11          asking for a request, asking for a ruling and asking  
12          for a production in a hearing that's not even a  
13          formal motion to compel.

14                  MS. NAUMER: Your Honor, I was simply trying to  
15          avoid the necessity of papers going back and forth  
16          so that we could handle this expeditiously. If  
17          Your Honors want papers to be filed, we can go that  
18          route. But you know, I certainly hope we don't  
19          have to seek your assistance again.

20                  JUDGE ALBERS: I'm going to mute the call for a  
21          minute so we can confer.

22                               (Whereupon there was

1                   then had  
2                   an off-the-record  
3                   discussion.)

4           JUDGE ALBERS:   Okay.   In response to those  
5   statements, if Verizon -- well, Verizon has made  
6   that request on the record.   Verizon is entitled to  
7   continue to ask for DRs,   and we don't see any harm  
8   right now for Miss Naumer to ask   that question  
9   today during this hearing on the record.

10                   If any such documentation exists, then we  
11   believe that North County should provide that  
12   documentation.   However, North County can, you know,  
13   redact the name of the particular customer or any  
14   type of pricing agreement that   North County and the  
15   customer came to because I believe,   once again,  
16   it's Verizon's concern to see the date on the  
17   documents as opposed to anything else on it.

18           MR. DICKS:   I'm not exactly sure what the  
19   document   request is.   Maybe she can restate it.

20           JUDGE ALBERS:   Miss Naumer.

21           MS. NAUMER:   Verizon would seek any  
22   documentation that would identify any commitment of

1 a start date from North County to a customer or a  
2 potential customer in Illinois.

3 MR. DICKS: Without any of the customer  
4 information identified except for the city or  
5 township. Is that correct?

6 MS. NAUMER: The committed start -- yes. We  
7 are not interested in identifying your specific  
8 customer. You can redact that information. We will  
9 not object to that.

10 JUDGE SHOWTIS: And any pricing information if  
11 that was part of a commitment.

12 JUDGE ALBERS: And if no, you know, actual  
13 document exists, then just indicate that the  
14 commitment was orally made, if any such  
15 commitments, if any oral commitments exist.

16 MR. DICKS: Okay. Next?

17 MS. NAUMER: Your Honor, if the answers in  
18 regard to oral commitments particulars in terms of  
19 the timing of such oral commitments be identified?

20 JUDGE ALBERS: I think that was --

21 JUDGE SHOWTIS: That was already covered. That  
22 would have to be provided if there were oral

1 commitments.

2 MR. DICKS: Yeah. That was 3.07 or 08, I  
3 thought.

4 MS. NAUMER: I just want to avoid a response  
5 that says we made oral commitments period.

6 JUDGE SHOWTIS: Right. Now, if there were oral  
7 commitments, we were asking for the dates of such  
8 commitments.

9 MS. NAUMER: Thank you.

10 JUDGE ALBERS: I think that takes us next to  
11 VZ-NCC 3.25. In looking over the materials, we  
12 ourselves are still not exactly sure what Verizon  
13 intended 3.25 to ask for.

14 Miss Naumer, could you please state what  
15 was Verizon's intentions.

16 MS. NAUMER: You know what, Your Honor, could  
17 you just give me one moment? I'm realizing that I  
18 only provided in my materials to you the misstated  
19 3.25 of North County's response. Could you give me  
20 one moment to pull my file?

21 JUDGE ALBERS: Okay.

22 MS. NAUMER: Thank you, Your Honors.

1                   3.25 reads as follows: "NCC stated in  
2       response to VZ-NCC 1.20 that NCC determined it  
3       would provide service outside the Leaf River  
4       Exchange in the first quarter of 2000. As  
5       previously asked in VZ-NCC 1.20, please describe  
6       all locations where NCC plans to provide service in  
7       Illinois. Please provide all documents evidencing  
8       NCC's answer."

9                   So what we're seeking are the locations in  
10      Illinois as well as documents evidencing the  
11      locations.

12                  MR. DICKS: If I'm not mistaken, Your Honors,  
13      your prior rulings probably cover that, that you  
14      want documentation as to the locations where we  
15      were going to provide service and the date they  
16      were going to provide service and if there were  
17      documents, the documents that identify those. If  
18      there aren't any documents, state there are none.  
19      If there are documents, we can redact customer ID  
20      and pricing information.

21                  MS. NAUMER: I think that there is a difference  
22      here. The previous request had to do with specific

1 commitments for start dates, whereas 3.25 is  
2 looking for information that is not restricted by  
3 specific customers and committed start dates being  
4 made to those customers.

5 MR. DICKS: Okay. In other words, these would  
6 include where we were planning to back in the first  
7 quarter of 2000?

8 MS. NAUMER: We are looking for not limited to  
9 the first quarter of 2000. You stated -- you  
10 stated in your response to 1.20 that you determined  
11 you would provide service outside of Leaf River in  
12 the first quarter of 2000. We are looking for  
13 documentation that supports your statement that you  
14 decided to provide service outside of Leaf River at  
15 any point, not limited to the first quarter of  
16 2000.

17 MR. DICKS: That's what the data response, I  
18 mean, the data request asks for.

19 MS. NAUMER: No. 3.24 asks for documentation  
20 that identifies the time frame, whereas 3.25 asks  
21 for documentation that identifies the location.  
22 That's the difference between the two. And if

1       they're one in the same document, that's fine. But  
2       3.24 is looking for the timing and 3.25 is looking  
3       for the location.

4               JUDGE SHOWTIS: We have a clarification  
5       question of Miss Naumer.

6               MS. NAUMER: Uh-huh.

7               JUDGE SHOWTIS: And I realize you drew a  
8       distinction between commitments to provide service  
9       and just determinations as to when service would be  
10      provided, and you were talking about locations in  
11      Illinois as well as documents evidencing locations.

12              I thought you indicated in summarizing  
13      your request that you're now asking for that  
14      information from beginning of the first quarter of  
15      2000 and going forward or is this limited to the  
16      first quarter of 2000? We have some confusion on  
17      that.

18              MS. NAUMER: No, Your Honor, it is not limited  
19      to the first quarter of 2000. The only reason that  
20      the first quarter of 2000 is identified in the  
21      question is because in North County's previous  
22      answer they stated that they made a decision in the

1 first quarter of 2000.

2 But we are looking for -- we are -- if  
3 North County made a decision to provide service  
4 outside of Leaf River at any point and they have  
5 documentation of that, we would like to see that  
6 documentation. For instance, you know, it could  
7 have happened in 2001, it could have happened in  
8 2000 that they decided that they were going to  
9 provide service, you know, in Carbondale.

10 And, you know, they would likely have some  
11 piece of paper that says "We should enter  
12 Carbondale. It would be a good market for us."  
13 And that's the type of documentation that we're  
14 looking for.

15 JUDGE SHOWTIS: I understand the request now.  
16 I think this is separate from any commitment to  
17 customers. This may be covered -- let's put it  
18 this way. This may be covered in documents  
19 pertaining to the business plan.

20 JUDGE SHOWTIS: To the extent it's not, if  
21 there are documents and determinations to provide  
22 service at other locations that for some reason



1 don't fit within what Mr. Dicks believes to be a  
2 business plan, I think it should be provided.

3 MR. DICKS: That's fine, Your Honor.

4 JUDGE SHOWTIS: And like I said previously, in  
5 requesting information being turned over, we're not  
6 requiring turning over any pricing information or  
7 any names of particular customers. I think we're  
8 looking again in terms of names of towns or cities.

9 JUDGE ALBERS: I think that takes us to the  
10 last point that Verizon raised and that's the  
11 privilege log. We don't see any reason why North  
12 County could not provide a privilege log and would  
13 ask that North County do so and provide the  
14 responses that we've already directed it to  
15 provide.

16 MR. DICKS: Your Honor, I can make this  
17 representation right now that the only documents  
18 being withheld are any documents that would be  
19 constituting this business plan.

20 So I mean, is Your Honor requiring that I  
21 identify every single correspondence to my client  
22 that is attorney/client privileged communications

1       that may refer to the business plans or refer to  
2       this discovery dispute? I mean, obviously the  
3       attorney/client communications are privileged.

4             MS. NAUMER: Your Honor, I can clarify. The  
5       only things that Verizon would be seeking a  
6       privilege log would be for responsive documents  
7       that are being withheld on the basis of privilege.

8             MR. DICKS: They're all going to be produced to  
9       the judges for review. Doesn't that obviate the  
10      need,  
11      Your Honor, for a privilege log at this point?

12            JUDGE ALBERS: One moment, please.

13                    (Whereupon there was  
14                    then had  
15                    an off-the-record  
16                    discussion.)

17            JUDGE ALBERS: Well, here's the way we're  
18       looking at it. It seems that North County says the  
19       only thing that would appear in that privilege log  
20       is information that pertains to the business plan  
21       or any forms it was in in the past few years.

22                    To the extent that North County's counsel

1       and to the extent that North County and its attorney  
2       hypothetically had conversations regarding the  
3       business plan, then those conversations reduced to  
4       writing would constitute a document, you know,  
5       pertaining to the business plan. However, because  
6       North County's lawyer would presumably deem that,  
7       you know, an attorney/client privilege as applying  
8       there, in theory they wouldn't have to provide that  
9       document.

10               So if they're not providing the document  
11       pertaining to the business plan because of the  
12       nature that it was raised, that being between the  
13       attorney and the client, then you should identify  
14       that on the privilege log.

15               MR. DICKS: Well, wait a minute. There have  
16       been numerous objections based upon confidentiality  
17       and privilege asserted by Verizon in this  
18       litigation. Is it the judge's position that each  
19       side needs to go back as to every single request  
20       and identify all of the correspondence between the  
21       attorney and the client that may refer to some  
22       matter that was the subject of discovery?

1           MS. NAUMER: Your Honor, that is not what we're  
2           requesting. Counsel is completely misconstruing the  
3           basis and the purpose of a privilege log.

4           MR. DICKS: But if I sent a letter to my client  
5           asking about the specifics of the privilege log --  
6           excuse me -- about the specifics of the business  
7           plan, Your Honor wants me to identify that  
8           correspondence by date and so on and so forth?

9           JUDGE ALBERS: Well, I think more importantly  
10          the response to that letter would probably fall --  
11          would be something that would have to be included  
12          in the privilege log if they responded in writing  
13          to your inquiries about the business plan.

14          MR. DICKS: Well, I doubt there are any. I  
15          mean, I'll look. But most times I write my client  
16          and my client calls me on the phone or we meet. So  
17          I mean, I doubt there are anything back from him.  
18          But even that would be privileged, and there would  
19          be no basis to ever get any of that communications.

20          JUDGE ALBERS: Well, the privilege log isn't  
21          supposed to be a list of things that Verizon can  
22          get access to. It's just a list of documents that

1       exist that you don't want to turn over to Verizon  
2       because of the existence of a particular privilege.

3           MR. DICKS: But in every single litigation  
4       there's correspondence back and forth between the  
5       litigant and the litigant's attorney. And I have  
6       not seen an instance where a court has ruled that on  
7       a privilege log all of their correspondence that  
8       refers to the discovery or the substance of the  
9       lawsuit have to be identified on a privilege log.  
10      I find it highly unusual.

11           MS. NAUMER: Your Honor, once again I don't  
12      understand. It seems like North County's attorney  
13      is misconstruing once again the purpose and the  
14      nature of a privilege log.

15           If there are documents in North County's  
16      possession that North County withheld that are  
17      responsive to a discovery request and the only  
18      reason they're being withheld is because of a  
19      privilege, they should identify those. Verizon has  
20      not withheld any documents or other answers on the  
21      basis of privilege, contrary to North County's  
22      counsel's representation that he just made.

1           MR. DICKS: It is beyond belief that counsel  
2           has not discussed with her client and the client  
3           with counsel matters that concern the discovery in  
4           this case, which would in no way be discoverable,  
5           even though they may be responsive. They may  
6           address all kinds of responsive issues, but because  
7           of the nature of the communication between the  
8           attorney and the client, they're never produced,  
9           nor are they ever required to be listed on a  
10          privilege log.

11          MS. NAUMER: Your Honors, do you want further  
12          discussion of this?

13          MR. DICKS: I do not want to list all of the  
14          letters to my client and all of the e-mail to my  
15          client that discusses the issue of the business  
16          plan or cities in which we want to provide service  
17          or any of my client's responses back to me, if  
18          there are any, because those are in violation.

19                 And they exist in every case, and it is  
20          not the usual practice to have to identify each  
21          correspondence even if it does contain information  
22          that would otherwise be responsive to a document

1 request or interrogatory.

2 JUDGE ALBERS: Hang on for a minute.

3 (Whereupon there was  
4 then had  
5 an off-the-record  
6 discussion.)

7 JUDGE ALBERS: Mr. Dicks?

8 MR. DICKS: Yes, Judge.

9 JUDGE ALBERS: How many documents do you  
10 believe that you have would have been responsive to  
11 Verizon data requests but that you did not turn  
12 over because of a privilege? And that's including  
13 communications with your client.

14 MR. DICKS: I'm guessing -- let me break them  
15 down. I'm guessing that ever since Verizon first  
16 requested documents regarding the business plan,  
17 I've probably written to my client -- I think  
18 they're all by e-mail -- on probably a half a dozen  
19 occasions. And as I sit here today, I don't know  
20 if he ever responded by e-mail. I'd have to check.

21 But if it was, it would have been only one  
22 or two times. Most times a response is verbal. All

1 of the other documents that I'm withholding -- and  
2 this is the part that I have to guess at 'cause I  
3 have not seen any of the business-plan documents.  
4 They haven't been turned over to me for review.

5 But I'm surmising from my discussions with  
6 my client that they are very limited. I mean, we're  
7 probably talking about less than 20 pages of  
8 documents.

9 JUDGE SHOWTIS: Okay.

10 MR. DICKS: So everything -- based upon the  
11 judge's order so far, everything that I'm turning  
12 over would be, you know, about 20 documents. And  
13 the only thing I was not planning on turning over  
14 would be my correspondence with the client.

15 MS. NAUMER: Your Honor, I think that there's a  
16 lack of understanding regarding the scope of the  
17 discovery requests in and of themselves. The  
18 discovery requests never sought communications  
19 between an attorney and a client.

20 I mean, for instance, if Mr. Dicks sends  
21 his client an e-mail that said, "Could you please  
22 send me your business plan so I can respond to



1       discovery," that is not something that I believe  
2       falls within, you know, the scope of the discovery  
3       request. If, on the other hand, Mr. Dicks and his  
4       client sat down together and developed a business  
5       plan --

6               MR. DICKS: Well, that never happened.

7               MS. NAUMER: And quite honestly, you know, we  
8       were somewhat concerned seeing the responses to  
9       3.24 and 3.25 that that's exactly what happened.

10              MR. DICKS: Let me clarify. I am not -- I am  
11       litigation counsel, outside litigation counsel for  
12       North County Communications. I have never had any  
13       business dealings with North County Communications  
14       other than litigation counsel and maybe reviewing a  
15       lease for it. I don't engage in any portion of  
16       their business planning, nor have I ever or anybody  
17       from my firm has ever.

18              So I mean, I don't know if that quells any  
19       concerns. But you know, if I wrote to my client  
20       saying "Is it true that your business plan back in  
21       2000 or in 2000 included plans to go into Leaf  
22       River and Carbondale?" And there was a response to

1       that, that is a document that's responsive and it  
2       is entirely privileged and would never be produced  
3       under any circumstance.

4               So I have not done any of the business  
5       planning or have ever been engaged in any business  
6       planning nor anybody from my firm. I am litigation  
7       counsel, outside litigation counsel. I represent  
8       hundreds of clients. This is only one of my  
9       clients. So if that quells any concerns about my  
10      involvement in the business plan, then I'm sorry  
11      that anybody was operating under any  
12      misapprehension.

13             JUDGE ALBERS: Okay. Thank you.

14             One moment, please.

15                     (Whereupon there was  
16                     then had  
17                     an off-the-record  
18                     discussion.)

19             JUDGE ALBERS: Okay. Given the representations  
20      by Mr. Dicks on the type of materials he has, for  
21      now we're going to withhold any direction on the  
22      privilege log until Tuesday when we meet again to

1 discuss the business plan, at which time we'll take  
2 that up again.

3 MR. DICKS: Sounds good.

4 MS. NAUMER: Thank you, Your Honor.

5 JUDGE SHOWTIS: Let's go off the record.

6 (Whereupon there was  
7 then had  
8 an off-the-record  
9 discussion.)

10 JUDGE ALBERS: Given the concerns regarding the  
11 scheduling, Mr. Dicks indicated that he could have  
12 the material to Verizon no later than February  
13 28th. And we're going to hold him to that.

14 In the meantime, before next Tuesday we  
15 ask both sides to check their schedules so that when  
16 we meet next Tuesday, we can discuss any changes to  
17 the rest of the schedule, particularly in light of  
18 the concerns briefed by Mr. Dicks off the record  
19 regarding his client and his own personal matters.

20 Is there any other questions or comments  
21 about that?

22 JUDGE SHOWTIS: And I would reflect also a need

1       for us to revise the schedule in light of the  
2       concerns raised by Miss Naumer with regard to  
3       Verizon's testimony being due on March 10th. So in  
4       other words, we'd ask the parties to be ready on  
5       next Tuesday at the three-o'clock hearing to  
6       discuss revised dates for the remaining testimony  
7       and then for the evidentiary hearing.

8               MR. DICKS: Sounds good, Your Honor.

9               JUDGE SHOWTIS: Is there anything else that  
10       counsel need to have discussed or addressed on the  
11       record today?

12              MR. DICKS: Not as far as North County is  
13       concerned, Your Honor.

14              MS. NAUMER: I'm sorry. Do we need what?

15              JUDGE SHOWTIS: Is there anything else that  
16       needs to be brought up on the record today?

17              MS. NAUMER: I'm sorry, Your Honor. I didn't  
18       hear you.

19                       No. There's nothing further on behalf of  
20       Verizon.

21              JUDGE SHOWTIS: Okay. Then the hearing in this  
22       matter will be continued to February 25, 2003, at

1           three o'clock p.m.

2                               (Whereupon the hearing  
3                               in the above matter was  
4                               continued to February  
5                               25, 2003, at 3:00 p.m.  
6                               in Springfield.)

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1       STATE OF ILLINOIS    )  
                                  )  SS  
2       COUNTY OF SANGAMON )

3       CASE NO:    02-0147

4       TITLE:       NORTH COUNTY COMMUNICATIONS CORPORATION  
                      vs. VERIZON NORTH, INC., and VERIZON  
5                       SOUTH, INC.

6                               CERTIFICATE OF REPORTER

7               I, Jami Tepker, do hereby certify that I am a  
8       court reporter contracted by SULLIVAN REPORTING  
9       COMPANY of Chicago, Illinois; that I reported in  
10      shorthand the evidence taken and proceedings had on  
11      the hearing of the above-entitled case on the 21st  
12      day of February, 2003; that the foregoing pages are  
13      a true and correct transcript of my shorthand notes  
14      so taken as aforesaid; and contain all of the  
15      proceedings directed by the Commission or other  
16      persons authorized by it to conduct the said hearing  
17      to be so stenographically reported.

18             Dated at Springfield, Illinois, on this 5th day  
19      of March, A.D., 2003.

20  
21  
22      -----  
                    Reporter